



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-HQ-OAR-2011-0081; FRL-9609-5]

RIN 2060-AQ69

Revisions to Final Response to Petition From New Jersey Regarding SO₂ Emissions From the Portland Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the preamble and regulatory text to the Final Response to Petition From New Jersey Regarding SO₂ Emissions From the Portland Generating Station (Portland) published November 7, 2011, to revise minor misstatements. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour sulfur dioxide (SO₂) national ambient air quality standard (NAAQS) in the State of New Jersey, and not in specific counties within the state. These revisions have no impact on any other provisions of the rule.

DATES: Comments. Written comment must be received on or before **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Public Hearing: If a public hearing on this proposal is requested by **[INSERT DATE 7 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, it will be held on January 11, 2012, at 9:00 a.m. at the U.S. EPA Region 3 Regional Office, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and the public hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2011-0081, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.

- Email: a-and-r-docket@epa.gov. Attention Docket ID No. EPA-HQ-OAR-2011-0081.
- Fax: (202) 566-9744. Attention Docket ID No. EPA-HQ-OAR-2011-0081.
- Mail: EPA Docket Center, EPA West (Air Docket), Attention Docket ID No. EPA-HQ-OAR-2011-0081, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460.
- Hand Delivery: EPA Docket Center (Air Docket), Attention Docket ID No. EPA-HQ-OAR-2011-0081, Environmental Protection Agency, 1301 Constitution Avenue, NW, Room 3334, Washington, D.C. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2011-0081. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and be free of any defects or viruses. For additional information

about the EPA's public docket, visit the EPA Docket Center homepage at

<http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in

www.regulations.gov or in hard copy at the EPA Docket Center EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, D.C. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Hawes (919) 541-5591, hawes.todd@epa.gov, or Ms. Gobeail McKinley (919) 541-5246, mckinley.gobeail@epa.gov, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539-04, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Why is the EPA issuing this proposed rule?

This document proposes minor amendments to the Final Response to Petition From New Jersey Regarding SO₂ Emissions From the Portland Generating Station (See 76 FR 69052). We have published a direct final rule, making minor modifications to that rule in the "Rules and Regulations" section of this Federal Register because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposal will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this action will be posted on the EPA's website www.epa.gov/ttn/oarpg/new.html.

C. What should I consider as I prepare my comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through www.regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404-02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA-HQ-OAR-2011-0081.

2. Tips for preparing your comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).

- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

D. How can I find information about a public hearing?

The public hearing, if requested by [**INSERT 7 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER**], will be held on January 11, 2012, at the EPA Region 3 Regional Office, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 from 9:00 a.m. until the last registered speaker has spoken. The EPA will make every effort to accommodate all speakers that arrive and register before 12 noon. Oral testimony will be limited to 5 minutes per commenter. The EPA encourages commenters to provide written versions of their oral testimonies either electronically or in paper copy. Verbatim transcripts and written statements will be included in the rulemaking docket. If you would like to present oral testimony at the hearing, please notify Ms. Pam S. Long, Air Quality Policy Division (C504-03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541-0641, long.pam@epa.gov. Persons interested in presenting oral testimony should notify Ms. Long at least 1 day in advance of the public hearing. The last day to register will be January 10, 2012. If using email to register, please provide the following information: name, affiliation, address, e-mail address, and telephone and fax numbers. Commenters should also notify Ms. Long if they will need specific

equipment, or if there are other special needs related to providing comments at the public hearing. The EPA will provide equipment for commenters to show overhead slides or make computerized slide presentations if we receive special requests in advance. The EPA encourages commenters to provide a copy of their oral testimony electronically (via email or CD) or in hard copy form. For updates and additional information on the public hearing, please check EPA's Web site for this rulemaking, www.epa.gov/ttn/oarpg/new.html. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rule. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations or comments at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at a public hearing.

E. How is the preamble organized?

Supplementary information:

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- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low- Income Populations

II. Specific Revisions

The preamble and rule text to the Final Response to Petition From New Jersey Regarding SO₂ Emissions From the Portland Generating Station (See FR 76 69052) contain minor misstatements that the EPA is proposing to revise in this action. In the preamble section IV.A, Summary of the Modeling for the Proposed Rule, the EPA inadvertently referred to four specific counties in New Jersey when discussing violations of the 1-hour SO₂ NAAQS. The statement reads, “The EPA also modeled the emissions from Portland using the AERMOD dispersion model and determined that the modeled concentrations from Portland, when combined with the relatively low background concentrations, cause violations of the 1-hour SO₂ NAAQS in Morris, Sussex, Warren and Hunterdon Counties in New Jersey.” This conclusion is not correctly stated as the EPA’s modeling did not separately examine air quality in each of the four counties identified. A more accurate description of the EPA’s conclusion was presented in the April 7, 2011, proposal which did not refer to those counties in our explanations of the modeling results. Furthermore, between proposal and promulgation, the EPA did not separately examine each of the four counties identified, so in the final rule there was no reason to change this proposed description to specifically list counties. Therefore, we are now proposing to revise the statement in the November 7, 2011, final rule preamble to be consistent with the description in the April 7, 2011, proposal by removing the references to Morris, Sussex, Warren, and Hunterdon Counties. We propose that the statement will now read, “The EPA also modeled the emissions from Portland using the AERMOD dispersion model and determined that the modeled concentrations from Portland, when combined with the relatively low background concentrations, cause violations of the 1-hour SO₂ NAAQS in New Jersey.”

Similarly, in the rule text, Part 52-[Amended], Subpart NN-Pennsylvania, section 52.2039 in 40 CFR part 52, of the final rule, the EPA inadvertently referred to those same four counties in describing the finding of significant contribution to nonattainment and interference with maintenance of the 1-hour SO₂ NAAQS. The provision reads, “The EPA has made a finding pursuant to section 126 of the Clean

Air Act (the Act) that emissions of sulfur dioxide (SO₂) from the Portland Generating Station in Northampton County, Upper Mount Bethel Township, Pennsylvania (Portland) significantly contribute to nonattainment and interfere with maintenance of the 1-hour SO₂ national ambient air quality standard (NAAQS) in Morris, Sussex, Warren, and Hunterdon Counties in New Jersey.” We propose that the rule text now read, “The EPA has made a finding pursuant to section 126 of the Clean Air Act (the Act) that emissions of sulfur dioxide (SO₂) from the Portland Generating Station in Northampton County, Upper Mount Bethel Township, Pennsylvania (Portland) significantly contribute to nonattainment and interfere with maintenance of the 1-hour SO₂ national ambient air quality standard (NAAQS) in New Jersey.”

Although the New Jersey Department of Environmental Protection (NJDEP) modeling analysis submitted with the September 2010 petition identified NAAQS violations at receptors in certain counties, the purpose of the EPA modeling was not to identify or corroborate the entire geographic footprint of the violations in New Jersey. The EPA modeling analysis was conducted for the purpose of corroborating the existence of NAAQS violations in New Jersey caused by Portland and for determining the remedy needed to eliminate all NAAQS violations caused by Portland. The EPA modeling thus focused upon identifying only the area where the maximum concentration was expected to occur. We used the same receptor grid for the final rule as for the proposed rule, which was focused on the area of maximum impacts occurring in Warren County, New Jersey. The remedy was determined by assessing the emission reduction needed to eliminate the maximum modeled violation in New Jersey, which occurs in close proximity to Portland in Warren County. There was no need to make an assessment of impacts at all locations within New Jersey since eliminating the NAAQS violations at the highest impacted receptor provided the basis for the remedy which, by its nature, would eliminate all modeled violations caused by Portland in the entire state. Therefore, the EPA finding pursuant to section 126 of the Clean Air Act (the Act) applies to New Jersey generally. The proposed revision is consistent with NJDEP’s request for a finding that emissions from Portland significantly contribute to nonattainment or

interfere with maintenance of the 1-hour SO₂ NAAQS in New Jersey. The proposed revision is also consistent with the language in sections 110 and 126 of the Act which is phrased such that the petitioner can request a finding that a source in one state is significantly contributing to nonattainment or interfering with maintenance of the NAAQS in another state. The addition of the counties was neither necessary nor intentional and did not arise from a request from the petitioner or any other commenter.

The proposed revision will not affect the emission limits, increments of progress, compliance schedules, or reporting provisions specified in the November 7, 2011 final rule. No adjustments to the existing modeling or other technical analyses and no new analyses are necessary to make the revisions. Accordingly, we are taking comment only on the proposed change to the phrasing used to describe our finding based on the analyses conducted for the remedy. The proposed revisions do not change the conclusions that the EPA made in the final rule. The EPA is requesting comment only on the specific revisions proposed herein. The EPA is not reopening or requesting comment on any other aspect of the rule published on November 7, 2011, including the agency's air quality modeling, interim emission limits, final emission limits, increments of progress, rationale for the emission limits, or other requirements finalized in the November 7, 2011 rule.

III. Statutory and Executive Order Reviews:

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action simply revises minor wording errors in the November 7, 2011 rule. This action corrects a response to a petition that is narrow in scope and affects a single facility. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., because this proposed rule, if finalized, under section 126 of the CAA will not in-and-of itself create any new information collection burdens but simply revises minor wording errors in the November 7, 2011, rule. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour SO₂ NAAQS in the State of New Jersey, not in specific counties within the state.

Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The revisions being proposed in this notice do not impose any new requirements on small entities. This action simply revises minor wording errors in the November 7, 2011, rule. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour SO₂ NAAQS in the State of New Jersey, and not in specific counties within the state.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action does not contain a federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any 1 year. This action proposes minor wording revisions to the November 7, 2011, final rule in this notice that are not expected to exceed \$100 million or more for state, local, and tribal governments, in aggregate, or the private sector in any 1 year. This action simply revises minor wording errors in the November 7, 2011, rule. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour SO₂ NAAQS in the State of New Jersey, and not in specific counties within the state. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Again, this action simply revises minor wording errors in the November 7, 2011, rule. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour SO₂ NAAQS in the State of New Jersey, not in specific counties within the state.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The November 2011 final rule primarily affects private industry, and does not impose significant economic costs on state or local governments. This action simply revises minor wording errors in the November 7, 2011, rule. These revisions clarify the EPA's finding that Portland significantly contributes

to nonattainment or interferes with maintenance of the 1-hour SO₂ NAAQS in the State of New Jersey, and not in specific counties within the state. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have a substantial direct effect on tribal governments, on the relationship between the federal government and Indian tribes, or the distribution of power and responsibilities between the federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this action. This action simply revises minor wording errors in the November 7, 2011, rule. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour SO₂ NAAQS in the State of New Jersey, and not in specific counties within the state.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action simply revises minor wording errors in the November 7, 2011, rule. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour SO₂ NAAQS in the State of New Jersey, and not in specific counties within the state.

The public is invited to submit comments or identify peer-reviewed studies and data, which the EPA may not be aware.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any

disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This rule proposes minor revisions to a previously promulgated rule. These revisions clarify the EPA's finding that Portland significantly contributes to nonattainment or interferes with maintenance of the 1-hour SO₂ NAAQS in the State of New Jersey, and not in specific counties within the state.

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedures, Air pollution control, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: December 14, 2011

Lisa P. Jackson,
Administrator.

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